

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

LARNETTE WESTBROOK,

Plaintiff,

v.

Civil Action No. 5:09CV56  
(STAMP)

UNITED STATES OF AMERICA  
and KUMA DEBOO, Warden,

Defendants.

**MEMORANDUM OPINION AND ORDER**  
**AFFIRMING AND ADOPTING IN PART REPORT**  
**AND RECOMMENDATION AND DECLINING IN PART**  
**TO AFFIRM AND ADOPT REPORT AND RECOMMENDATION**

I. Procedural History

The pro se<sup>1</sup> plaintiff, Larnette Westbrook, commenced this civil action by filing a complaint pursuant to 42 U.S.C. § 1983, Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), and the Federal Tort Claims Act ("FTCA"). The plaintiff filed a motion for summary judgment, to which the defendants did not respond.

This case was referred to United States Magistrate Judge John S. Kaull for initial review and recommendation pursuant to Local Rule of Prisoner Litigation 83.02 et seq., and 28 U.S.C. §§ 1915(e) and 1915A. On July 16, 2009, the magistrate judge issued a report and recommendation recommending that the plaintiff's claims under 42 U.S.C. § 1983 be denied and dismissed with prejudice; that the

---

<sup>1</sup>"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1237 (9th ed. 2009).

plaintiff's Bivens and tort claims be denied and dismissed without prejudice for failure to exhaust administrative remedies; and that the plaintiff's motion for summary judgment be denied as premature and moot.

The magistrate judge advised the parties that, pursuant to 28 U.S.C. § 636(b)(1)(C), any party may file written objections to his proposed findings and recommendations within ten days after being served with a copy of the magistrate judge's recommendation. The plaintiff filed objections. For the reasons set forth below, this Court affirms and adopts in part the magistrate judge's report and recommendation, and declines in part to affirm and adopt the report and recommendation.

## II. Facts

In his complaint, the plaintiff alleges that the defendants have denied him appropriate medical care. Specifically, the plaintiff asserts that he suffers from Human Immunodeficiency Virus ("HIV") and colon warts, which can be fatal given his HIV. Although the plaintiff was approved for a colon examination more than thirty-six months ago, he claims that he has yet to receive that examination.

The plaintiff also contends that the defendants are deliberately indifferent to a serious health risk by allowing staff members and visitors to smoke. While the plaintiff's current place of incarceration is a smoke-free facility, he alleges that the defendants allow people to smoke in designated areas that inmates

must pass through, placing him and other inmates' health at risk of physical harm due to secondhand smoke.

Finally, the plaintiff asserts that he is employed by Prison Industries ("UNICOR"), and that UNICOR's failure to pay him minimum wage violates the Fair Labor Standards Act ("FLSA") and Walsh-Healy Act. The plaintiff requests an order from this Court directing UNICOR to pay all inmates either minimum wage or a wage comparable to the industry norm in the prison's geographical market. He also seeks \$5,000.00 for breach of contract damages.

### III. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Accordingly, because the plaintiff filed objections, this Court reviews the report and recommendation of the magistrate judge de novo.

### IV. Discussion

#### A. Title 42, United States Code, Section 1983 Claim

The magistrate judge recommended that the plaintiff's § 1983 claims be dismissed with prejudice because § 1983 only applies to

state actors. Based upon a de novo review, this Court agrees.

Title 42, United States Code, Section 1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and law, shall be liable . . .

Because § 1983 does not apply to the federal government and its employees, the statute has no application to this case. See Gomez v. Toledo, 446 U.S. 635, 640 (1980) (“[H]e must allege that the person who has deprived him of that right acted under color of state or territorial law.”). The plaintiff’s § 1983 claims, therefore, must be dismissed with prejudice. Instead, this Court will address the plaintiff’s claims under the appropriate standards of review.

B. Bivens Act

The magistrate judge recommended that the plaintiff’s Bivens action be dismissed for failure to exhaust administrative remedies. Under the Prison Litigation Reform Act (“PLRA”), a prisoner bringing an action under 42 U.S.C. § 1983, or any other federal law, must first exhaust all available administrative remedies. 42 U.S.C. § 1997e. Exhaustion under § 1997e is mandatory, Booth v. Churner, 532 U.S. 731, 741 (2001), and applies to “all inmate suits about prison life.” Porter v. Nussle, 534 U.S. 516, 532 (2002). If failure to exhaust is apparent from the complaint, federal

courts have the authority pursuant to 28 U.S.C. § 1915 to dismiss the case sua sponte. Anderson v. XYZ Correctional Health Servs., Inc., 407 F.3d 674, 682 (4th Cir. 2005). Actions brought pursuant to Bivens are subject to administrative exhaustion requirements of the PLRA. Porter, 534 U.S. at 524.

Administrative exhaustion requires an inmate to pursue informal resolution before proceeding with a formal grievance. 28 C.F.R. § 524.13. The Bureau of Prisons' ("BOP") formal administrative process is structured as a three-tiered system. 28 C.F.R. § 542.10, et seq. First, an inmate must submit a written complaint to the warden, to which the warden supplies a written response. 28 C.F.R. §§ 542.11 and 542.14. For inmates who do not obtain satisfactory relief at the first tier, the second tier allows the inmate to file an appeal with the Regional Director of the BOP. 28 C.F.R. § 542.15. The third, and final, tier of the formal administrative process is an appeal to the National Inmate Appeals Administrator for the Office of General Counsel. Id. An inmate's administrative remedies thus are considered exhausted only after pursuing a final appeal to the National Inmate Coordinator for the Office of General Counsel.

Proper exhaustion of a PLRA or Bivens claim requires an inmate to file timely and procedurally sound administrative grievances in compliance with the BOP's administrative grievance process as outlined above. See Woodford v. Ngo, 548 U.S. 81, 90-91 (2006) ("Proper exhaustion demands compliance with an agency's deadlines

and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." ).

Here, the plaintiff has failed to provide any evidence that he exhausted his administrative remedies regarding his Bivens claims. Furthermore, he concedes in his complaint that he has not completed this process, despite acknowledging that administrative remedy procedures are available. Accordingly, the plaintiff's Bivens claims must be dismissed for failure to properly exhaust his administrative remedies.

C. Federal Tort Claims Act Claim

The FTCA permits recovery of "damages from the United States Government for personal injuries sustained during confinement in a federal prison, by reason of the negligence of a government employee." United States v. Muniz, 374 U.S. 150, 150 (1963). Pursuant to the provisions of the FTCA, the administrative process must be fully exhausted before FTCA claims may be brought in an action in federal court. 28 U.S.C. § 2675(a). Administrative exhaustion under the FTCA requires an inmate to submit written notification of the incident -- accompanied by a sum certain claim for monetary damages -- to the federal agency responsible for the activities giving rise to the claim. See 28 C.F.R. § 14.2(a) and (b)(1). The inmate may file an FTCA suit in federal court only after the agency denies the inmate's claim, and must do so within six months of the mailing of the denial. 28 C.F.R. § 14.9(a). An

administrative tort claim is statutorily presumed denied if six months pass without action on a properly filed administrative claim. 28 U.S.C. § 2675(a) ("The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed final denial of the claim for purposes of this section.").

Failure to completely exhaust administrative remedies before filing an FTCA claim, however, is a jurisdictional defect that cannot be cured by administrative exhaustion after suit is filed. McNeil v. United States, 508 U.S. 106, 122 (1980). A prematurely filed FTCA claim "cannot become timely by the passage of time after the complaint is filed." Id. at 106.

In this case, the plaintiff filed a "Claim for Damage, Injury or Death" with the BOP on May 21, 2009. Approximately five days later, on May 26, 2009, he filed his complaint containing his FTCA claims in this Court. Because the plaintiff filed this action before the BOP denied his administrative remedies and before the passage of the six-month period which would implicate statutory presumption of denial, this Court finds, upon a de novo review, that the plaintiff has failed to exhaust his administrative remedies for his FTCA claims. Accordingly, those claims must be dismissed.

D. Plaintiff's Summary Judgment Motion

The plaintiff's summary judgment motion, which is attached to and made part of this memorandum opinion and order, was received by

this Court on June 15, 2009. Because this motion was not attached as a part of any pleading, and it does not appear that it was served upon the opposing party, this Court deems the plaintiff's motion to be an ex parte communication. All parties are notified that it is improper to communicate with this Court in this manner and that the appropriate procedure is to file pleadings with an appropriate certificate of service of the same upon all other parties. Accordingly, it is ORDERED that the plaintiff's motion for summary judgment (Docket No. 11) be filed and a copy sent to all parties and counsel of record herein.

In his motion for summary judgment, the plaintiff asserts that no genuine issues of material fact exist and he is entitled to a judgment as a matter of law. In support of this motion, he claims that his rights have been violated and reiterates the claims raised in his complaint. As noted above, because this motion for summary judgment was never served on the defendants, they have not had the chance to respond to the plaintiff's arguments.<sup>2</sup> For the reasons set forth above, this Court finds it appropriate to dismiss the plaintiff's § 1983, Bivens, and FTCA claims, despite the defendants' inability to respond to the motion for summary judgment.

Nevertheless, at this time, this Court finds it necessary for the defendants to respond to the plaintiff's breach of contract

---

<sup>2</sup>The plaintiff's objections to the magistrate judge's report and recommendation argue that the defendants have not filed an answer in this case.



claims that he raises in his complaint, specifically the alleged violations of the FLSA and the Walsh-Healy Act. In his report and recommendation, the magistrate judge failed to address these claims, but rather denied the plaintiff's motion for summary judgment as premature and moot. Thus, the plaintiff's breach of contract claims have not been decided by this Court. Accordingly, the defendants shall file a response to the plaintiff's motion for summary judgment on or before January 20, 2010. The plaintiff shall file any reply on or before February 8, 2010. The magistrate judge's recommendation that the plaintiff's motion for summary judgment be denied as premature and moot is therefore not affirmed and adopted.

#### V. Conclusion

For the reasons set forth above, this Court AFFIRMS and ADOPTS IN PART the magistrate judge's report and recommendation and DECLINES IN PART to affirm and adopt the magistrate judge's report and recommendation. To the extent that the report and recommendation dismisses the plaintiff's § 1983, Bivens, and FTCA claims, the report and recommendation is adopted and affirmed. Accordingly, the plaintiff's § 1983 claims are DENIED and DISMISSED WITH PREJUDICE, and the plaintiff's Bivens and FTCA claims are DENIED and DISMISSED WITHOUT PREJUDICE. To the extent that the report and recommendation denies the plaintiff's motion for summary judgment, this Court declines to affirm and adopt the report and recommendation.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to the pro se plaintiff by certified mail and to counsel of record herein.

DATED: January 5, 2010

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE

NORTHERN DISTRICT OF WEST VIRGINIA  
CLERK, UNITED STATES DISTRICT COURT  
WHEELING WEST VIRGINIA

LARNETTE M. WESTBROOK  
PETITIONER'S

PRO'SE CIVIL ACTION NO. # 1'09-CV-47  
PRO'SE CIVIL ACTION NO. # 509-CV-56 ✓

V.

UNITED STATES OF AMERICA  
RESPONDENTS

FILED

JUN 15 2009

U.S. DISTRICT COURT  
CLARKSBURG, WV 26301

MOTION

Introduction

This Formal motion comes to the Honorable Court, a Summary Judgment Federal Rule Claim Civ. P. 56. ON this Day of 10<sup>th</sup>, MONTH OF JUNE, and YEAR OF 2009. WE HEREBY File AS CROSSREFERENCE A WRIT OF Habeas Corpus Claim pursuant to 28 U.S.C. § 2241. ON this Day of 10<sup>th</sup>, MONTH OF JUNE, and YEAR OF 2009. Conjunction to All other Claims Filed on; March 26<sup>th</sup> 2009; April 15<sup>th</sup> 2009; May 21<sup>st</sup> 2009. I've been waiting over several month - now to be credit for Industry credit due to I am a Formal UNICOR ORDERLY at this Correctional Institution but have not Received Credits yet.

Fact of STATEMENTS

ON OCTOBER 25<sup>th</sup> 2005, the petitioner's Arrived here at this Federal Correctional Institutional Gilmer Prison's. Doing petitioner's Incarceration as an inmate, while under the care and custody of the Attorney General of -  
(1) continue a ...

Gilmer Glenville, West Virginia Prisons. The -  
petitioner's Right is being clearly Violated. Due to  
the Facts of the Correctional Operation procedure  
standards (C. O. P. S.) by the Administrators and their  
CO-REPRESENTERS herein this Institution daily.

HEREIN, these Procedure of Method, Rules, Regulation,  
and policy, that controle Order to governer the  
Laws, Injunction to the Constitutional Amendment.  
Bill of Rights; Federal Bureau of Prisons Policy  
Regulation Manual, and U.S. Department of Labor  
Management and Budget wages Rules Regulation policy  
also Courts Rules of Procedures ARE NOT being -  
performed in the manner prescribed by Law.

However, the persons who hold their titles ARE  
performing their duties in their own PERSONNEL  
mannerism.

### Points And Authority HEREIN;

SUMMARY Judgment Federal Rules Civ. P. 56. A  
judgment granted on a claim or defense about  
which there is no genuine issue of material  
fact and upon which the movant is entitled to  
prevail as a matter of Law. • The court considers  
the contents of the pleadings the motions, and  
additional evidence adduced by the parties to  
determine whether there is a genuine ISSUE OF -  
(2) CONTINUE ON NEXT PAGE

material fact rather than one a Law. This procedural device allows the speedy — disposition of a controversy without the need for trial. Fed. R. Civ. P. 56 — Also termed summary disposition; Judgment on the pleadings See Judgment. (CASES; Federal Civil Procedures Key 2461-2559; Judgment Key 178-190 C.J.S. Copy-right And Intellectual Property 81; — Judgments 243; 274; Libel and Slander, Injurious Falsehood 184.)

Petitioner's 14<sup>th</sup> Amendment, and 5<sup>th</sup> B<sup>th</sup> Amendment's Rights is being violated that protect him by Law and Privilege, is clearly being violated by the staffs who is to protect him, but who also put his life and health at risk more. By their unprofessional conducted manners.

Would you say not... that the constitutional Laws is fields of Law dealing with aspects of the constitution provision, such as restriction on government power and guarantees of Rights AS IN; Civil Procedures, Criminal Procedures...

The Health Care Service Rights, and — Responsibilities STATES; 1<sup>st</sup> Right — WE have the Right AS INMATE(S) to health care service in  
(3) constitution...

Accordue with the procedures of their facility. Health care service include - Medical triage, dental triage, and All - support services. In the service of an emergency, we contact the nearest staff member (s).

2<sup>#</sup> Right - We have the Right as inmates to be treated with respect, consideration, and dignity.

3<sup>#</sup> Right - We have the Right as inmate (s) to Receive prescribed medications, and treatments in a timely manner, consistent with the Recommendation of the prescribing health care provider (s).

4<sup>#</sup> Right - We have the rights to as inmate (s) - to Request a routine physical examination as defined by Bureau of Prison's Policy (if you are under the age of 50; once every two years, if over the age of 50; once a year.)

The medical Administrators and Institutional Administrators employees are in the Personnel molds of neglect or failure to provide 'as' - inmate(s) with their professional manners of conduct on the level due to their assigned Titles Administrative wise or medical treatments - physically and dental or psychiatric care that is necessary to prevent or to treat by servicing (4) routine medical -

physical or emotional injury or ILLNESS  
IN a timely manner before he or her get  
Sicker. Furthermore by the Administrators  
NOT ANSWERS the our Filed Administrative  
Remedies ~~IS~~ NOT helping neither to resolve  
ISSUES of complaint herein AND thereoff.

By the petitioner's NOT RECEIVING his medical  
care treatment or colon X-RAY EXAMINATION  
that is NECESSARY for good health, is a Risk  
of his Life AND Violation of his Civil Rights  
AND Constitutional Law Rights plus BUREAU OF  
Prisons Policy Contract, while incarcerated  
under the care AND custody of the Attorney  
General.

This maltreatment(s) of the Medical Administr-  
rators, and Institutional Operation Administr-  
rators, IS violating the petitioner's Civil-  
Rights. IS very unprofessional manner of  
conduct performed. The Representations  
Legal obligation, and moral duties are not  
being performed in the Legal best Interest  
of the Inmate(s) or Third parties Benefactors  
in a timely manner toward petitioner's civil  
Rights or health care treatment or benefactors  
Liability Lost.

(5) parties . . . . .

Be as it may, on the issues of the petitioners complaints against THE FEDERAL PRISONS Industry INC., a wholly-owned U.S. Government Corporation operation under the trade name "UNICOR." We have already hereby reviewed the (FLSA's) requirements and the conclusion is that Laborers be paid at least minimum wage of that so said STATE by Regulation of Law. (NOTE: Prisoners ARE NOT listed as exempt.) Petitioner's is one of many workers who is qualified as a third party beneficiary to these contract operated by "UNICOR" since — UNICOR employs convict Labor on contracts is of more than \$10,000,00 dollars. "UNICOR" operation is in violation of (WHA) Title 41- USC 35 forbid convict Labor contracts of more than \$10,000,00 dollars.

Also on the non-smoking Institutional Policy Law, this Institution is in violation of the Rule, Regulation method Law that governs the policy. Since this is a non-smoking ALLOWED Federal Correctional Institution. Inhabit you say not, by allowing their Employees to smoke is saying they're above the Law... which is NOT true. This ALLOWANCE is still putting us inmates health at risk. This is a violation of the — petitioners Civil Rights as a prisoners AND CITIZEN'S.

(6) continue...



Specially due to the petitioners by a LEGAL  
CITIZENS OF THE UNITED STATES OF AMERICA  
AND due to several chronic health condition  
that carbon dioxide from cigarette smoke  
cause a risk that can cause petitioners to have  
breathing ATTACK (S) EVEN DEATH.

Furthermore, since the Designated smoking AREAS  
for staff (S) is in front of every housing units,  
and one in front of the mess hall where we EAT,  
IS NOT, but they still smoke there, several feet  
from the Exist and Interference. We inmates still  
have to travel through their carbon dioxide  
smoke of the Administrators and OFFICERS. AND ONCE  
the inmates get their hands on the staff (S) cig.  
butts or crew end up smoking in side the units  
is more of a threat to the petitioners health  
because the smoke is more closed in one space.

We hereby, File these three (3) plus (1) addition  
conjunction to (3) (1) a writ of Habeas Corpus Claim -  
pursuant to 28 U.S.C. 2241 Attracting sentencing claim  
Number 1:09-CV-47. Seeking Relief due to the courts  
consideration to AN inmate in this type of situation  
Like if his shoes were on your court Respondents  
FEET. Court Authority ordering Providing normal  
damages; A trifling sum award, when a legal injury  
is suffered, but when there is no substantial loss

OR injury to be compensated, but a small  
Amount fixed A damage claim of 10,000.00  
for the Risk or deaf that is threatening the petitioner's  
Life by the Action of the Administrators and  
Offices Along with contract hired employees.  
Which they're have brach several contract to  
protect petitioner's from harm ways due to the  
Rules, Regulation and policy, without regards to  
the Amount of harm they cause by their personnel  
conduct manners - Also termed contemptuous -  
damage, CF. substantial damages [cases; -  
Damages Key 8-14 C.J.S. Damages; 3, 12-20]

#### Foot NOTES

Citing cases on Constitutional Rights For Prisoners  
SECTION (10.3) "Right To Medical Aid." 1.<sup>#</sup> INMATES  
have the right to due process of the Law under the  
fifth, Fourteenth and Eight Amendments. <sup>44</sup>The process  
right has been couched in terms of the inmates -  
right to be free from abuse of discretion on the  
part of the prison's Administrative personnel or  
unprofessional conduct Action; <sup>45</sup>to protect not  
cause harm. <sup>46</sup>protection of inmates life and health  
from Administration Action. <sup>47</sup>2.<sup>#</sup> Right to be Free from  
the infliction of cruel and unusual punishments  
AS guaranteed by the Eight Amendment. <sup>48</sup>Violation  
of the Eight Amendment right has been found  
when there is an intentional denial of needed -  
(8) continue on next page

Medical care, or when a prison's officials - conduct indicates deliberate indifference to the medical needs or safety of inmates. Cited cases; Duncan v. Duckworth, 644 F.2d 653 (7<sup>th</sup> Cir 1981.); Lareau v. Manson, 507 F. Supp 1177 - (D. Conn 1980). Modified in 651 F.2d 96 (2d Cir 1981). Gates v. Collier 501 F.2d 1291, 1303 (5<sup>th</sup> Cir 1974.) Jackson v. State of Mississippi 644 F.2d 1142 - (5<sup>th</sup> Cir 1981.) Barron v. Baltimore, 32 U.S. (7 pet.) - 243 (1833) Palko v. Connecticut 302 U.S. 319 (1937). Snyder v. Massachusetts 291 U.S. (1934); Hurtado v. California, 110 U.S. 516 (1884). Gordilin v. - Maldonado, D.C., Puerto Rico 1974, 377 F. Supp 1349 VAN Buskirk v. Willinson C.A. Wash. 1454, 216, F.2d 735. Larsen v. Hoffman D.C. D.C., 1977 444 F. Supp.

### Argument

Petitioner's argument is that, he has been approved to have this colon X-RAY EXAMINATION some thirty-six (36) months ago by his institutional physical P.H.D. Provider of this Medical Center service, and still have not received this Medical Aid treatment care. Furthermore this is part of his medical-care treatment, due to the nature of his health care. However, while serving his first term of prescribed sentencing at Rochester, MN. Federal Medical Center hospital for nearly Five (5) YEARS. The petitioner's had several surgery operation to -

have gentle warts removed off the insides, and outside of the colon, before they turn into cancer growth diseases. Which is very fatal to a person or citizen like the petitioners. Specially due to him having Human Immunodeficiency Virus disease known as (HIV) that is a chronic stage advance since 1985. Also for the record a common cold should be fatal to the petitioners and worry, stress from these imprisonment condition can weaken his immune system to fight off infection.

Now to our disbelief the petitioners has been medically clear for Prison Release into a work Release program called Community Care Center - (CCC) ~~half~~-way-house. After being granted Parole Release to supervision by August 31<sup>st</sup> 2009. Furthermore, the petitioners has not had his six (6)-month Institutional medical check-up that determine or not the medication he takes for AIDS is working to keep the virus from mutating into other cell membranes. He needs his C-D4 and C-D8 Load count check, this is done through Lab Blood testing to make sure that the immune system is not low and kept high so that his body can fight off infections...

10. CONTINUE ON NEXT PAGE

## Relief Sought

Petitioner seeks relief due to these Civil Rights Violation against him, due to his Right to be protected by the Laws of the Fifth, Fourteenth, and Eight Amendment. Being an convicted inmate and citizen's of the UNITED STATES OF AMERICA - to be free from abuse of discretion on the part of prison's Administrators and Federal Government Administrators Agency's branches To be Protected from unconstitutional Administrative branches Actions; Protecting of inmates - or citizen's life, and health, while being Justisley compensated for their maltreatment and breach of Federal Medical Service contract and - Institutional Industry, Inc., Whom holds their title of Authority Like the Deputy Warden. Who can provide normal damages ORDERS OF THE COURT'S AUTHORITIES to have Respondents pay a Trifling sum Awarded to petitioners, when a legal injury is - suffered, but when there is no substantiation loss or injury medically document by - EXAMINATION ON RECORD just yet to be compensated, but a small Amount fixed a damage of 1<sup>st</sup> \$5,000.00 for branch of The Federal Bureau of Prisons policy contract.

Petitioner's other claim of \$10,000.00 for being Afflicted by cigarette smoke from the Institutional Statues and murals. Also the Institutional UNICOR Industry claim of full compensation for his past Labor wage income. Due to Violation of STATES management - and Budget Regulation policy. Whistle Blower Protection Act of 1989 and 2002 etc. To prevent Retaliation by UNICOR Administrators or Federal Government OFFICERS or contract hired employees for these complaints Filed by Plaintiffs

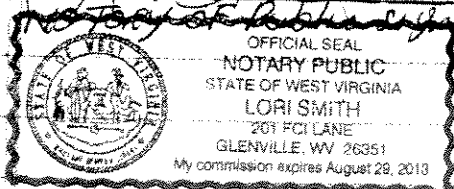
### Conclusion

We HEREBY, ORDER THE HONORABLE COURT'S TO GRANT PETITIONERS Declaratory Judgment Fed. Civ. P. 57 claim and Summary Judgment Fed. Civ. P. 56 Claim on the merit under the color of Law of Court Procedure and Statute Rules timely Limited prescribed by Law.

6/10/09

DATE

*Lori Smith*  
NOTARY PUBLIC



Sincerely submitted  
By *Laurie M. Winters*  
DATE 06/10/09

U.S. DEPARTMENT OF JUSTICE  
Federal Bureau of Prisons

REQUEST FOR ADMINISTRATIVE REMEDY

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: Westbrook, Lornette M. 04413007 C-2 Federal Correctional Institution Gilmer  
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A- INMATE REQUEST

This formal complaint comes to your respectful OFFICE PRESENCE to inquire about having my SENTENCE computation FOR Industry Good time credits forthwith SINCE I'm AN WORKER AT UNICOR herein since JANUARY 16<sup>th</sup> 2008. Which I'm Eligible to receive three (3) to Five (5) days FOR EACH month. Please response to this Administrative Remedy in the NEAR future. Thank You!

04/30/09  
DATE

Lornette M. Westbrook  
SIGNATURE OF REQUESTER

Part B- RESPONSE

DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_

Part C- RECEIPT

Return to:

LAST NAME, FIRST, MIDDLE INITIAL

REG. NO.

UNIT

INSTITUTION

SUBJECT: \_\_\_\_\_

FR: Mr. Larnette M. Westbrook 04413007 C-2 RM#131 LE901  
Federal Correctional Institution Gilmer  
P.O. Box 6000  
GLENVILLE, WV 26351



RECEIVED

JUN 15 2009

U.S. DISTRICT COURT  
CLARKSBURG, WV 26301

To: Clerk, UNITED STATES DISTRICT CO  
NORTHERN DISTRICT OF WEST VIRGINIA  
500 WEST Pike Street, RM#304  
P.O. Box 2857  
CLARKSBURG, WV 26302-2857

FBI Gilmer, P.O. Box 5000, Glenville, WV 26351

Date

6/10/09

The enclosure was processed through special mailing procedures and forwarded to you. The letter has been opened and inspected. If there is a question over which this facility wish to return the information or if you wish to encloses correspondence relating to another address, please advise.